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ART. I. — SOME LATE EFFORTS AT CONSTITUTIONAL REFORM.

SINCE 1870, when Illinois adopted a new Constitution of a most peculiar character, as will be seen hereafter, there has arisen in a number of States a strong movement in the direction of political purification attempted to be worked out through the means of constitutional amendment, — a movement partly successful and partly abortive. It has apparently come to a definite pause, so that we can measure its spent force and describe the field over which it has passed. It was the result of a decided but undemonstrative feeling of general disgust with the shameless corruption in State capitols, and the new constitutional provisions were expressly designed either to purify the Legislature, or, if that could not be done, to forbid all legislation not imperatively necessary. Besides this, it may be said that numberless fancied ills of the Commonwealth were treated each with its supposed appropriate specific. The movement began in the West, and almost to the end of its course retained the characteristics of its origin, in its honest, blundering, narrow theories, in its heavy and clumsy blows at impudent wrong, and in its spasmodic wrath, which, having raged a certain length of time, gradually cooled again into the indifference out of which it had been for the while roused.

The first State in line was Illinois, then Pennsylvania, then Ohio, and finally Michigan and New York. In some respects

the standard of intelligence grew higher at each step, till we have in the new Constitution of New York an excellent and effective reform. The proposed constitutions of Michigan and Ohio were rejected by the popular vote, and many of their provisions, though new when introduced into Illinois, Pennsylvania, and New York, were, so far as respects Michigan and Ohio themselves, the old law, little or not at all altered. Now this work, though probably not generally known and though it has not succeeded in interesting many persons except those immediately concerned, is, as this paper is intended to show, of very great significance. To begin with, as there is no smooth road through the details of the subject, and as they must in one way or another be mastered, our first object will be to analyze these "organic laws." Perhaps the easiest way of doing this is to catalogue the evils at which the new constitutions were directed, and under each evil give the respective remedies. The following are all the more important of the former: —

False election returns.

Abuse of the pardoning power.

Delay of justice owing to the pressure of business in courts of final jurisdiction.

Special Legislation in General. — Special legislation as a source of corruption at the hands of private persons and of corporations. Special legislation as interfering with municipalities. Special legislation as being unequal.

Bribery of legislators.

The tricks by which improper legislation is obtained, such as, by passing bills when only a quorum of persons interested is present; by passing a bill through its different readings with intentional haste, so as to avoid attention; by crowding the bills at one time, as at the end of a session, so as to force through certain measures unobserved; by changing the existing law by an amendment so that an intention to make a substantial alteration of the original law is not noticeable; by amending a bill on its passage so as to change its purport without the fraud being perceived; by revising, repealing, etc., a statute by reference merely to its title, the effect of the action not being comprehensible without a particular knowledge of the law thus revised; by passing laws under false or misleading titles; by passing laws containing a number of provisions in which an improper

enactment, called a "snake in the grass," is concealed; by passing what is equivalent to a bill in the shape of a joint-resolution, thus evading the governor's veto; by tacking an indefensible appropriation to a general appropriation bill and getting it passed, because the governor could not veto part without vetoing all; in making appropriations in a private law.

LEGISLATION IMPROPER AND OFTEN PROCURED BY CORRUPTION in the way of voting extra compensation to persons who had contracted with the State, and who alleged themselves to be losers unexpectedly, thus leading contractors to bid low to secure the contract, with the purpose of repairing any loss by additional pay after the work had proceeded so far as to make it impossible to go back; releasing corporations and individuals from liability which had accrued from them to the State; making the bonds and stock of private corporations legal investments for trustees, etc.; limiting the compensation to be recovered for injuries done to persons or property by a corporation.

INEQUALITY OF TAXATION.

EXTRAVAGANCE IN INCREASING THE DEBT OF THE STATE AND IN LENDING THE STATE'S CREDIT OR MONEY TO PRIVATE UNDERTAKINGS, OR IN ENGAGING IN INTERNAL IMPROVEMENTS. THE SAME EVILS IN MUNICIPALITIES.

THE APPROPRIATION OF STATE AID TO SECTARIAN OBJECTS, OR IN EXEMPTING THESE LATTER FROM TAXATION.

SINECURE OFFICES, such as inspectorships of merchandise, etc.

THE SYSTEM OF PAYING DEPARTMENT OFFICERS, PROTHONOTARIES, RECORDERS, ETC., BY FEES, thus leading to greatly undue compensation to the official and to extortion upon the public.

EVILS IN PRIVATE CORPORATIONS, as the usurpation by officers, directors, etc., of inordinate authority over the corporate affairs; the undertaking by corporations of enterprises outside of their legitimate functions; the dishonest way in which their officers can arrange to manage corporations in their, the officers', own interest; the watering of railroad stock; the trade in charters; the immunity of corporations under their charters held irrevocable by the Dartmouth College case; the combination of private corporations so as to put an end to competition and obtain a monopoly; inordinate charges by corporations, especially transportation companies.

These are all or nearly all the evils which the constitutions we are now considering find to exist in the State; and the remedies which have been applied to them are given in the

following summary, which the general reader may think it enough merely to glance at. It is put in finer print, in order to distinguish it from the rest of this paper, and its clauses are numbered for the purpose of reference.

Some of the provisions hereinafter given are not new, but were part of the previous constitutions; especially was this the case in Michigan and Ohio. In Illinois, Pennsylvania, and New York they were, however, either entirely new or so changed as to be substantially so. To follow in detail all the changes which resulted from the movement, which is the subject before us, would be impossible; and the statement now to be given, though rough, is, it is believed, a complete and true account of the recent constitutional amendments.

I. *Corruption in elections and false election returns* are sought to be remedied in Pennsylvania by providing that ballots shall be numbered when cast and the voter told his number. That the voter may write his name upon his ballot if he so wishes. Election officers sworn not to tell how citizens vote. That under no registry law shall a voter be disfranchised because not registered. That bribing or being bribed shall be a cause for challenge, and that the person challenged shall before voting be required to deny under oath the accusation. That bribery by a candidate shall be punished by perpetual disqualification for office. That violation of the election laws shall, in addition to other penalties, be punished by deprivation of suffrage for four years. That the Court of Common Pleas of each county may appoint inspectors of elections to be of different political parties, all the law judges to concur in their appointment, and the inspectors to have the ultimate decision when the members of the election boards differ.

To the same general end, as well as to secure equality of representation, in the Constitution of Illinois and the proposed Constitution of Ohio, the "cumulative" or "free vote" was introduced as to the elections of members of the Legislature.

II. *Abuse in the exercise of the pardoning power* is sought in Pennsylvania to be remedied by providing, that no pardon or commutation of sentence shall be granted except upon the written recommendation of the Lieutenant-Governor, Secretary of the Commonwealth, Attorney-General, and Secretary of Internal Affairs, after full hearing upon public notice in open session, the recommendation, with the reasons therefor, to be recorded and filed in the office of the Secretary of the Commonwealth.

III. *The accumulation of cases in the Supreme Courts* of the larger States has been sought, in Ohio, to be remedied by providing for the existence of a Circuit Court, under the Supreme Court, which should have as much appellative jurisdiction as the Legislature might think fit to give.

IV. It has been attempted in Illinois to remedy the *evils of special legislation* by prohibiting special legislation in some twenty different cases, the principal of which are, granting any exclusive privileges to individuals or corporations; granting right to lay down railroad tracks; incorporating towns or changing their charters; regulating township or county affairs; regulating courts of justices; regulating elections; opening or vacating roads; granting divorces; changing names of persons or places; granting exemption from taxation, etc., etc.

In Pennsylvania, by prohibiting any special or local legislation in about forty cases, including those enumerated in the Illinois Constitution, and adding a number of much the same general nature; by providing that no special bill shall be passed without public notice and advertisement, which notice must be exhibited in the General Assembly.

In Ohio, by providing that all general laws shall be uniform; by prohibiting privileges being given by a special law to municipalities or private corporations; and by providing that the Legislature shall make laws organizing and classifying municipalities, the number of classes not to exceed six, and that as to any class the laws should be general and uniform.

In Michigan, by prohibiting special legislation in some nineteen cases, the most important of which correspond with those mentioned in the constitutions of Illinois and Pennsylvania; and by requiring a two-thirds vote before public money can be appropriated to local or private purposes.

In New York, by prohibiting special legislation in some seventeen cases, the most important of which correspond with those already given; by providing that a three-quarters vote shall be necessary to the introduction of any special bill after the first sixty days of the session; by providing that public notice shall always be made of the intention to apply for such a bill, the mode of giving such notice to be prescribed by the Legislature; by providing that no special law shall embrace more than one subject, and that no general law shall embrace any provision of a private character.

V. *The harm in general which a Legislature can do* is sought, in Illinois and Pennsylvania, to be remedied by providing that the sessions of that body shall be only biennial.

VI. It has been attempted in Illinois to put an end to *legislative bribery* by requiring an oath from each legislator that he has used no bribery in obtaining his election, etc., and will not be bribed to vote for any bill, etc.

In Pennsylvania, by an oath of the same nature, only more elaborate; and by providing that any legislator who shall accept a bribe or promise of personal advantage, etc., etc., shall be deemed guilty of bribery and incur the penalties therefor, i. e. perpetual disqualification for office, etc., etc.; by providing that offering promises of advantage, etc., etc., shall be considered bribery; by providing that corrupt solicitation of members of the General Assembly shall be defined and punished by law; and by providing that witnesses in bribery cases shall not be allowed the privilege of silence on the ground of any liability to criminal prosecution which might be incurred by their testifying, but that such testimony shall not in any way be used against them.

In New York, by requiring an oath from legislators (and all other officials) that they did not directly or indirectly use bribery in their election; by providing that any official who shall accept any bribe or advantage, etc., etc., to affect his official action, shall be guilty of felony, as also any person offering a bribe, promise, etc.; by providing, in regard to the privilege of not testifying, substantially the same as in Pennsylvania; by providing that the expenses of all bribery investigations shall be a charge upon the State, and that any district attorney failing faithfully to prosecute shall be removed from office.

VII. *The tricks by which improper legislation is usually obtained* are sought in Illinois to be remedied by providing that every bill shall be read at large on three different days; that no act shall embrace more than one subject, to be expressed in its title; and that every bill and its amendments shall be printed before its final passage.

In Pennsylvania, by providing that every bill shall be read at large on three different days; that every bill shall be referred to a committee, and when returned, be printed; that no bill, except general appropriation bills, shall be passed containing more than one subject expressed in its title; that all amendments be printed; that a vote of the majority of the entire Legislature be necessary to the passage of every bill; that upon the final vote the ayes and noes be taken and recorded; that no law be revived, repealed, or amended, etc., by reference merely to its title, but that the original law and the alteration be set out at length; that the presiding officer of each house shall sign every bill in the presence of the house after the title has

been read, and that the fact of the signing shall be entered upon the journal; and that no bill shall be amended on its passage so as to change its original purpose.

In Ohio, by providing that every bill shall be fully read on three different days; that every law shall contain but one subject, expressed in its title; and that no law shall be repealed, revived, etc., except in a manner substantially the same as that provided in the Pennsylvania Constitution.

In Michigan, by providing that no bill or new subject of legislation shall be introduced after the first fifty days of the session, except upon special recommendation of the governor; that at an extra session only the subject for which the session is called shall be considered; that a majority of each entire house shall be necessary to the passage of every bill, and the ayes and noes shall be taken and recorded; that no law shall embrace more than one subject, expressed in its title; that no law shall be repealed, revised, etc., by reference to its title, but that the original law and the change shall be set out at length; and that no public act shall take effect till ninety days from the end of the session.

In New York, by providing that no civil law shall embrace more than one subject expressed in its title; that no law shall be repealed, etc., by reference to its title, but that the original law shall be set out at length; that no act shall be passed providing that any existing law shall be deemed part of such act; that every bill shall be considered and read twice, section by section; that every bill shall have three readings, no two of which shall be on the same day; that every bill and its amendments shall be printed; that the question on the final passage of a bill shall be taken immediately upon the last reading, section by section, and shall be taken by yeas and nays, which shall be recorded; that a majority of each entire house shall be necessary to pass a bill; that in the case of tax-bills and bills appropriating money or releasing any debt due the State, three fifths of the members of each house shall be necessary to make a quorum; that every tax-bill shall in itself, and without reference to any other law or act, state the tax and the object to which it is to be applied.

VIII. *The trick of attaching to a general appropriation bill which, being absolutely necessary, will not be vetoed by the governor, an obnoxious item,* thus sheltering the latter from the disapproval of the executive, is sought in Pennsylvania, Ohio, and New York to be remedied by giving the governor power to veto any one or more items, while the rest of the law goes into effect.

IX. *The appropriation of money in a private law* is specially prohibited by the Illinois Constitution.

X. *The evil of a joint resolution's being used to avoid the governor's veto* has been remedied in Pennsylvania and Michigan by providing that every such resolution, except on a question of adjournment, must be approved by the governor, just like an ordinary bill.

XI. *The evil of awarding extra compensation to public contractors beyond the contract price, after the work has been begun,* is in terms prohibited in the constitutions of Illinois, Pennsylvania, New York, and in the proposed constitutions of Michigan and Ohio. In New York municipalities are also forbidden to do this.

XII. *The corruption which has arisen from the Legislature undertaking to release or make terms with debtors to the State* has in Illinois been sought to be remedied by prohibiting such action in terms. In Pennsylvania this is confined to the case of corporations. In New York the Legislature is forbidden to audit or allow any private claim against the State, but this shall be done according to law.

XIII. And *honesty* is sought in Pennsylvania to be secured by increasing the number of legislators, and thus making it more difficult to obtain improper legislation.

XIV. In Pennsylvania *certain railroad bonds had been by law declared legal investments for persons in a fiduciary capacity to make,* and this by the new Constitution of that State is expressly prohibited.

XV. In Pennsylvania *laws had been passed limiting the amount which could be recovered for an injury done by a corporation to the person of an individual.* By the new Constitution the passage of laws limiting the damages to be recovered for any injuries to either person or estate is prohibited, and it is provided that the statutes of limitations in such cases shall be the same for corporations as for individuals.*

XVI. *Inequality in the mode of prescribing or of exempting from taxation* has been sought in several of the constitutions to be remedied by a code of minute regulations too voluminous to be given here even in an abstract: they are to the general effect that taxation shall be uniform and for public purposes.

XVII. *Sectarian endowment* is in Pennsylvania and Illinois substantially prohibited.

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* See I., Weekly Notes of Cases, Philadelphia, 319, where such laws seem to be regarded by the Supreme Court of Pennsylvania as void under the old Constitution.

XVIII. *Extravagant and improper expenditure of the public money and the lending of the State's credit or funds to private individuals and corporations*, and XIX., the same evils in *municipalities*, have been sought in several of these constitutions to be remedied by provisions even more numerous and detailed than those relating to taxation. They arrange exactly how the State's revenues shall be spent, and endeavor to predestinate for every dollar of the public money its final and inevitable fate during all time to come.

XX. *Certain offices which experience has shown to be sinecures or sources of corruption* — as, for example, the State inspectorship of merchandise, etc. — are in Pennsylvania abolished, and the duty of providing their substitutes relegated to the municipalities. While in New York, except so far as they may be necessary to protect the public health, the interest of the State in its revenues, etc., and for keeping a correct standard of weights and measures, the offices are abolished altogether.

XXI. *The system of paying certain officers, such as sheriffs, prothonotaries, etc., by fees for each service performed*, having in the large cities grown to be a double evil,—first, in paying the official inordinate compensation, amounting sometimes to more than a hundred thousand dollars a year; and, secondly, in leading to great extortion and the charging of illegal fees, — it is provided in the new Constitution of Illinois that all the fees, with some exceptions, shall be paid into the public treasury, and that salaries fixed by law shall be paid the officer. The Constitution itself regulates the fees of certain county officers; and as to court clerks, etc., provides that their salaries shall not exceed that of a circuit judge. In Pennsylvania it is provided that the salaries shall be fixed by law and the fees paid into the treasury. In Ohio, as to probate judges and court clerks, this is made the rule.

XXII. *The evils found to exist in private corporations*, of such importance as to call for remedy, have been provided for as follows: That of the *usurpation of too much power against the wishes of the stockholders by the officers and directors of corporations*, by providing, in the constitutions of Illinois and Pennsylvania and the proposed constitution of Ohio, that the stockholders shall choose their directors by the "cumulative" or "free vote," under which a minority may have representatives; and in Illinois and Pennsylvania, by providing that railroad corporations shall keep open books showing the amount of stock, assets, liabilities, etc.; and in Illinois, by providing that the directors shall make an annual report to the auditor-general, showing the operations for the year.

That of undertaking enterprises outside of their legitimate sphere, by providing, in Pennsylvania, that no corporation shall engage in any business other than that expressly authorized by its charter, or hold any real estate except such as may be necessary for its legitimate business, and by specially providing that no company doing business as a common carrier shall engage in mining or manufacturing directly or indirectly, or hold any real estate, except such as may be necessary for its business.

In Michigan, by providing that no corporation shall hold real estate for more than ten years, except such as is necessary to the exercise of its franchises.

That of its officers managing the corporation in their own interest, by providing, in Pennsylvania, that no officer of any railroad or canal company shall be interested in furnishing material to such company or in the business of transportation as a common carrier of freight or passengers over the works of such company. In Ohio, by providing that no officer of any railroad company shall be interested in the receipts of such company otherwise than as an ordinary shipper, passenger, stockholder, bond-creditor, or employee, or in any arrangement which affords him greater advantage than are offered to the public, and all contracts for such a purpose are void.

That of "watering" railroad stock, by providing, in Illinois, that no railroad corporation shall issue any stock or bonds, except for money, labor, or property actually received and applied to the purposes for which such corporation was created; that all stock-dividends or other fictitious increase of the capital stock or indebtedness shall be void; that no railroad stock shall be increased, except upon sixty days' public notice, to be provided by law. In Pennsylvania, by a provision similar to the above, except that stock-dividends are not in terms forbidden, and that the provision is so drawn as to cover all corporations. In Ohio, by an enactment to the same general effect as this last, except that it is provided that corporation-stock or bonded indebtedness shall not be increased except in pursuance of a general law, nor until the consent is obtained of the persons holding the majority of the stock at a meeting held after sixty days' notice. In Michigan, by forbidding all fictitious increase of the stock or bonds of any corporation.

That of the trade in charters, which may be described thus: a person or party of persons, having influence in the Legislature, procure a charter authorizing an enterprise of a certain kind, say to buy and sell land, and by its general phraseology empowering them to do almost anything, with leave to change the corporate name. This

charter its procurers never intend to use, but obtain to sell to persons who do not wish to go before the Legislature and lay out their schemes. A railway-construction company, for example, buy this charter; that is, buy all the stock at a nominal price, or in some mode substantially the same, step into the shoes of the original corporators, change the name and object of the corporation, and, after the revolution, set to work. This evil, we say, was, in Illinois and Pennsylvania, sought to be remedied for the time being by providing that all charters in existence, at the time of the adoption of the new constitutions, should be void, if *bona fide* work had not been begun thereunder. (In Illinois ten further days were given.)

The evils arising from the fact that under the Dartmouth College case all charters, in absence of express provision to the contrary, are irrevocable, were sought to be remedied in Illinois, by providing that no irrevocable grant of special privileges or immunities should be passed. In Pennsylvania, by providing that as to all charters then existing and revocable, and as to all future charters, the Legislature shall have the right to alter, revoke, or annul. That the Legislature shall not remit the forfeiture of the charter of any corporation then existing, or alter or amend the same, or pass any general or special law for the benefit of such corporation, except upon condition that such corporation shall thereafter hold its charter subject to the provisions of the new Constitution.

In Michigan, by prohibiting the irrevocable grant of any special privilege or immunity; and by providing that the right of eminent domain shall never be so abridged as to prevent the Legislature from taking the property, franchises, etc., of incorporated companies for the public use the same as the property of individuals. And that the exercise of the police power of the State shall never be so abridged as to permit corporations to conduct their business in such a manner as to infringe the equal rights of individuals or the general well-being of the State.

That of the combination of rival lines to put an end to mutual competition, by providing, in Illinois, that no railroad shall consolidate its stock, franchises, etc., with any other railroad owning a parallel or competing line; and that no consolidation shall be made except upon sixty days' public notice, according to law, to all the stockholders. In Pennsylvania, by substantially the same provision, which is moreover extended to canal and telegraph companies; and it is further provided, that no one shall act as an officer of two such rival companies. The question, whether two lines are competing, to be settled by a jury, as in a civil cause, at the suit of a complainant.

In Ohio, by a provision that no railroad shall so consolidate their stock or share their earnings; that no one shall act as officer of two such companies.

In Michigan, by a more elaborate provision substantially the same as these last, with the further prohibition that between two such corporations there shall not be, as to rates of fare or freight, so much as an understanding.

The evil of inordinate charges is sought to be remedied, in Pennsylvania, by providing that all railroads and canals are public highways; that any association shall have the right to lay down a railroad between any two points; that every railroad shall have the right to intersect, cross, connect with every other railroad, and all railroads must receive and transfer each other's freight, passengers, and tonnage, without delay or discrimination; that all individuals, corporations, etc., shall have the equal right to have their persons and property transported over railroads or canals, and no undue discrimination shall be made in the charges or facilities for transportation. Charges between two stations shall not exceed that on the same line to a more distant station. And no discrimination shall be made between transportation companies and individuals.

In Ohio, by providing that the Legislature shall interfere to prevent unjust discrimination and unreasonable charges by a railroad company; that no charge between two stations shall exceed that in the same direction to a more distant station.

In Michigan, by providing that the Legislature may pass laws establishing the maximum rates of charges for transportation on railroads, regulate the speed of trains, and prohibit two railroads making such running contract that discrimination is made in favor of either as against other companies owning connecting or intersecting lines; that the Legislature may establish maximum rates of tolls or freights on canals; that all railroads shall be public highways and all railroads common carriers; that any association or corporation shall have the right to construct a railroad between any two points, and every railroad shall have the right to intersect, cross, etc., every other railroad; and all railroads shall receive each other's passengers, freight, etc.

Such are the abuses, real or supposed, which have grown up in our Commonwealths, and such are the remedies which have been applied. To look into these latter in detail would be too much of a labor to be compassed in a magazine article. Enough particulars having been given to allow every one to form his conclusions, it

is not necessary to do more than point out the striking features of the long statement I have just set forth, the first of which is the remarkable animosity shown legislatures and corporations; no attack appears to be too vindictive, and no expression of distrust too insulting, when they are the objects. The assumption is that these are the sources of all public immorality, that they must be rigorously controlled, and that the constitutional provisions cited are adequate and effective for the purpose. It is true that most State legislatures are composed of men of low tone, ignorant, selfish, and easily debauched; it is also true that transportation corporations are often recklessly managed, are apt to be in the hands of unscrupulous men, and the relation between them and the State government is sooner or later one of bargain and sale. It is desirable, moreover, that this state of things shall be stopped, if not radically, at least to some appreciable degree, and it is necessary that some of it should be done through constitutional enactment. Having premised this, it is first of all for us to ascertain the boundaries within which a constitution must contain itself, and passing beyond which, it becomes a statute, a code, whatever one pleases, but in no proper sense a constitution. How far these new constitutions have kept within their natural sphere, and how far in going outside imperative need can be shown, is the question which will afterwards come next in order.

A written constitution then in this country has, by universal agreement, been regarded as necessary. First, to declare the inalienable rights of the individual citizen, which cannot be trenched upon by the government without a violation of those principles of freedom which, in the mother country, are enunciated in Magna Charta, the Petition of Rights, the Bill of Rights, etc., and here in the Declaration of Independence, and the succession of public manifestoes which followed its lead. The next office of the constitution is to provide for and define the departments of government, executive, legislative, and judicial; as to the first, regulating the governor's term of office, his patronage, and his veto power; as to the legislature prescribing the number of the representatives, the relation of the two houses to each other, the manner of meeting, and the general way of doing business; and as to the judiciary, provid-

ing for courts of civil and criminal jurisdiction, for appellate tribunals, and for the exercise of the power to grant the writ of *habeas corpus*, leaving every detail to the legislature; this, with the definition of the electoral suffrage, made up the substance of a State constitution, as the latter has existed in the past. Amendments of a precise nature have from time to time been added to check evils confessed to be of sufficient magnitude and permanence to call for notice. Such, for example, are the provisions making all future charters revocable, or forbidding the government, State or municipal, to undertake or assist in enterprises of a private kind. And here we come to the point from which the constitutional movement we are now considering started. As has been said before, it came from the West. The fundamental charters of the States which grew up with the emigration into the Mississippi Valley did double duty as constitutions and codes till statute law should be framed; without local usages or historical tradition, except of a vague kind, their constitutions had to supply the place which in the quondam Colonies the common law sufficiently filled. Naturally many enactments statutory in character remained as part of the constitution long after the time when the legislature might very well have taken them within its own cognizance; and so the jurist of the prairies saw nothing to shock his sense of fitness in constitutional provisions minutely enacting homestead laws, for example, or describing what labor should be exercised by convicts in the public prisons. Thus far very little harm resulted, beyond educating the politician in a radically false theory of constitutional law; but when, in the course of time, the legislature began to deteriorate in purity and intelligence, and wholesale bribery became a rule with scarcely an exception, the people, after enduring the evil with that good-natured tolerance so eminently American, came at last to consider how these things should be stopped. A constitutional convention was the first engine thought of, and little time was lost in getting it to work. Now, constitutional conventions, though abnormal and certainly dangerous bodies, have proved themselves honest, and neither more nor less wise than their constituents. Their most conspicuous quality was, therefore, as may be supposed, an audacity of suggestion which

was tempered neither by a consideration of the unscientific character of the reforms proposed, nor, what is surprising, by any anticipation of the practical futility of these latter. This gives the key-note to the whole of the work by which the "organic" law of Illinois in 1870, and of Pennsylvania in 1873, was revolutionized. The new Constitution of Illinois fills a quarto pamphlet of fifty pages, and, as the citations from it already given show, is a voluminous body of legal enactment. It does not cover so much ground as that of Pennsylvania, which is in reality an amplification of it, but its ludicrous points are more numerous, and its trans-Allegheny simplicity very marked. It provides, for one example, against two grades or qualities of grain being dishonestly mixed in an elevator; it defines with great nicety the meanings of the words "office" and "employment" respectively; and it takes the pains to tell us how "a frequent recurrence to the fundamental principles of civil government is absolutely necessary to preserve the blessings of liberty." It does not touch the most radical of all our troubles, dishonest elections, and contains so little not in the Constitution of Pennsylvania, that in discussing the latter we treat *it*, except in one point which is not to be passed over, the introduction, to wit, of the "cumulative" vote into the elections for members of the Legislature. However much mistaken we may think this attempt to be, it has the surpassing merit of recognizing and giving a proper importance to the fundamental evils of the State, and is an effort to work at consequences by controlling the cause, instead of the converse method. Except a similar clause in the rejected constitution of Ohio, it stands alone. How far Pennsylvania has conceded the principle of proportional representation will be seen later.

To take up the Pennsylvania Constitution, we have the provisions which are intended to secure fair elections and true election returns, — provisions which are found in no other constitution, and which have been claimed to possess much excellence. They are three, — numbering the ballots, putting the voter to his oath of purgation, and the supervision by the courts through inspectors. To the first and last of these no inconsiderable efficacy must be conceded; and if not followed by corresponding drawbacks, they will take their position as valuable

reforms. The question, whether they have any business in a constitution at all, and do not properly belong to a statute, will, with a host of like enactments, be examined hereafter. The *evil* which must result from numbering ballots is obviously the utter violation of the secrecy of voting; by this plan an entire class of men, in whose hands such knowledge is most dangerous, because they have the greatest interest in, and the readiest means of misusing it, are made the depositaries of the most sacred confidence of the citizen. Party organization becomes at once an inquisition which knows the exact position of each voter in the State, and which, while preparing for an election campaign, can have before it a table wherein every voter's name will be set down with the full details of his vote. Such a result requires no comment. On the other side, it may be said that under the ordinary plan dishonest election judges could open the boxes and read each vote as it was put in; so they could, and certainly often did, but such conduct, it must be remembered, never received the sanction of law. But now, from the earliest suggestion of the "numbering" plan, it has been admitted that, so far as the election assessors were concerned, secrecy of voting is legally abolished; and at the first election held under the new Constitution of Pennsylvania, the writer was told by one of the election judges that his ballot proved very diverting to these persons, because of the way in which certain candidates were scratched. Though secrecy is given up, not one of the disadvantages of the ballot system is removed, nor any of the decided advantages of the *viva voce* plan acquired. So much for the most important step taken for many years to secure reliable elections.

The invocation of the courts is little less serious than the remedy just considered, and is too, while certainly specious, a very questionable step. The principle, as it happens, is in Pennsylvania not new, though it is believed not much known elsewhere. It took its origin in the plan by which certain fiduciary duties which rested upon the city of Philadelphia were deputed to "commissions" as they are called, being small bodies of gentlemen acting like boards of trustees or directors. These commissions were appointed by the county courts, and were at first so admirably constituted that a new era seemed

about to open, and for a little while the darker side of the picture was not seen. It was not long, however, before it was found that a system which called upon the judges to perform duties so foreign to their office was clearly injuring the judicial tone; that it led to disputes, almost to intrigue; and that, though all this was as far as possible decently concealed, the higher minded of the judiciary united in deploring the position in which they were placed. Nor was this all; as time went on, in each of the commissions more than one notorious corruptionist pushed himself into a vacant place, with the help, perhaps, of a judge whose integrity when acting as a judge no one would for a moment think of doubting. In a word, the judiciary were being tainted by the evil which had been, it was thought, destroyed, because merely driven from the other parts of the political body. Now in the light of these facts, is a law by which further non-judicial duties, involving great responsibility and no inconsiderable temptation, are placed upon the courts, one which a statesman is to recommend to his constituents as a beneficent reform? * The last point to be noticed in this connection is the oath which the voter must take if challenged at the polls. The good likely to be accomplished by it is very small; election bribery, in the first place, is amazingly rare in this country, and such as does exist, or may grow up in the future, can be as easily if not more easily carried out mediately than immediately; and the "bribable" class is not one which finds much trouble in considering that not to have been done at all, within the meaning of an oath, which has only been done indirectly.

It is, too, a very characteristic feature of the movement we are discussing to attempt to banish fraud by oaths, when the whole current of modern thought is consistently against them and consistently in favor of their gradual reduction, if not abolition. In this matter, as we shall see, the Pennsylvania Constitution shows the completest disregard of the enlightenment of the age.

The next point in order is the provision in the Pennsylvania

* See 7 Legal Gazette, 117, for a spirited and convincing protest against such schemes, made by Judge White of Pittsburgh, who cites, in support of his position, some interesting Federal decisions.

Constitution for a Board of Pardons, apparently unexceptionable and one which cannot but very considerably lessen an evil which at all times has proved of much seriousness; the political workers, who come many of them from the criminal classes, having grown to regard themselves as privileged to violate any law, because secure of a pardon from a governor to whose election they may have contributed to a degree which should call for recognition. This provision, it is well too to notice, is properly a constitutional one.

In this place it may be said that the accumulation of cases in appellate tribunals, which has become a grievous and increasing wrong, receives no notice in any of the new constitutions, except the proposed one of Ohio, which provided for the existence of a lower court of appellate jurisdiction, and wisely left it to the Legislature to say how much business it should divide with the Supreme Court. The failure to act in this matter by the other States, especially Illinois and Pennsylvania, the two which assumed to do so much, is almost without excuse.

And now we come to the gravest of all the late constitutional changes, — the one which not merely Illinois, Pennsylvania, and Michigan, but Ohio and New York, unite in favor of, — that, namely, which circumscribes the power of special legislation. The Constitution of Illinois forbids the Legislature to deal with twenty different classes of subjects stated above, except through general laws; that of Pennsylvania, these twenty with twenty more; New York, seventeen, most of them corresponding with those of Illinois; Michigan, some nineteen; while the proposed Ohio constitution contented itself with providing that all general laws should be uniform; that no privileges shall be granted to municipalities or corporations, except by a general law; that, while the Legislature may divide the municipalities into classes not exceeding six, the laws as to each must be general. In the first place it is to be observed, that the practical benefits which flow from these changes are obvious and very considerable, while the harm to those needing only honest legislation is most of it problematic and exceptional. The principle of fettering the Legislature by the spasmodic enactments of a constitutional convention

will be considered in a moment. The arguments in favor of the restriction are, briefly, that the subjects mentioned are ones for which general laws are usually adequate; that the time of the Legislature will not be taken up with private interests; that matters of general importance will be better considered; that the laws will be more equal; that a source of corruption will to a certain extent be closed, — in these last two respects the prohibition of granting special privileges to municipal or private corporations will be found particularly beneficial; and that the volume of the laws will be reduced and the expenses of government be diminished. On the other hand it should be admitted that special legislation is not only not a necessary evil, but in the hands of a reasonably trustworthy legislature is an ordinary and recognized, and often the only means of accomplishing measures of utility and justice; and that it is a hazardous assumption that in the classes mentioned general laws, however efficacious in a normal state of things, will answer in a public or even private emergency, the hazard increasing almost in a geometrical ratio with the increase in the number of prohibited classes: a close examination of the Pennsylvania Constitution would, it is believed, demonstrate this. It must be remembered too that the prohibition of special laws will give rise to general laws passed to meet a special case; the general law, however fitting in the one instance, being many times injurious in its unrestricted operation. Nor is this evil a new one: a good illustration is furnished by a statute which was passed a few years ago in the writer's State. It was desired to make a certain executor file an account of a certain description, and in order to effect this result a general law was passed that all executors so situated should file such accounts. Now, whether a special law would have been proper or not in this case I do not know, but it is a fact that the general law as passed was an evil without mitigation, and if not condemned as unconstitutional, for reasons which do not concern us, would have caused endless vexation and injustice. It is, too, by no means an uncommon experience for a man in public life to see a general law about to be passed under such circumstances as these, and to find that the only compromise he can make with the promoters of

the measure is to persuade them to change the law from a general to a special one. In how many cases under the new system will not this refuge be found closed! In other words, the evil of general laws passed to meet special cases, which has always been grave, must be greatly enhanced by a constitutional provision hampering special legislation. So that such legislation should only be forbidden in the cases for which general laws have satisfactorily been found to answer. Nor should it be forgotten that the doubt which must continually arise whether or not a given act is special or general, illegal or legal, will throw much additional work and responsibility upon the courts, thus, with the provisions already spoken of a little above, and with the crop of questions which must spring up with the introduction of an elaborate constitution, overweighting them in a way really dangerous. The universal uncertainty inevitably prevailing in the interval between the passage of a law of doubtful constitutionality and the final adjudication upon it is an evil important enough to be noticed. Another hurtful result of the restriction upon legislation is in the centralizing effect which must follow a system of enactment which dwarfs and cripples the sovereignty of the State: especially is this the case with the provisions of the Constitution of Pennsylvania rendering counties unamenable to special laws. The citizen will come to feel but two interests, that of his municipality, and that of his nation: Pittsburgh and the United States will be everything; Pennsylvania, nothing. So much for the practical aspect of the question; much more serious is the *principle* of this revolution. Is it true, as has been said, that, in America, a State is governed by two legislatures, the one, ordinary, regular, subject to the governor's veto, under the Constitution, and personally responsible to the people; the other, abnormal, irregular, one-chambered, subject to no constitution, and, in so far as the desire of re-election makes a representative so, in no degree responsible? In other words, is our constitutional convention — that assemblage whose asserted omnipotence M. Laboulaye has shown to have such possibilities of perdition for a nation — a recognized legislature; and what other effect can follow but that the abridging of normal legislative power must make the body which issues

the prohibiting enactment necessarily such? If yes, have our needs been so desperate and this reform so valuable that, principle or no principle, we must adopt it? These questions are in point, and must, by the indorsers of the late movement, be sooner or later answered.

It may here be mentioned that in Illinois and Pennsylvania the legislature is further chained down to the limit of biennial sessions; and the people, whom it preys upon, given one year of repose in every two.

Bribery in the legislature is the next subject before us. In Illinois, Pennsylvania, and New York an oath is prescribed for the legislator, wherein he says with an elaboration of detail that he has not paid, or caused directly or indirectly, or promised to pay anything, etc., etc., to procure his election. In Illinois and Pennsylvania he also swears that he will not receive, directly or indirectly, anything, etc., etc., to affect him in the discharge of his official duty. The Pennsylvania and New York provisions apply to all State officers. As has been said before, the wisdom of such means to correct public evil is becoming more doubted every day. Oaths are being regarded as demoralizing to a high degree, easily evaded by those at whom they are especially directed, and their multiplication is treated by every publicist of eminence as one of the most significant of all signs of political impotency. The writer heard three very respectable professional gentlemen, on being inducted into their places as judges, make the following abjuration: —

"I do solemnly swear (or affirm) that I will support, obey, and defend the Constitution of the United States, and the Constitution of this Commonwealth, and that I will discharge the duties of my office with fidelity; that I have not paid or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing to procure my nomination or election (or appointment), except for necessary and proper expenses expressly authorized by law; that I have not knowingly violated any election law of this Commonwealth, or procured it to be done by others in my behalf; that I will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office, other than the compensation allowed by law."

The spectacle was humiliating. The New York oath is, it should be said, not only not promissory, but is much more concise and simple than the above.

Legislative bribery is further sought in Pennsylvania and New York to be remedied by giving a wider definition to the crime, and increasing its punishment; and by abolishing the privilege which every witness has of not testifying to anything which may subject him to a criminal action. These provisions are all good as far as they go; but two things must be considered: first, whether they belong in a constitution; and, secondly, whether they will accomplish any result not attained under the previous condition of things. The former seems questionable, unless the latter can be answered most satisfactorily. Nothing is more difficult in our meridian than to discover and punish legislative bribery. It can be done so secretly, so indirectly, and the parties to the transaction have so strong a motive for mutual fidelity, that hitherto the only efforts to stop it, proposed by intelligent men, have been in the direction of attempts to send incorruptible men to the legislature. Now, will the fear of being fined or imprisoned for a *felony* restrain a man who laughed at the danger of the same punishment as for a misdemeanor? Will parties be any more ready to betray the guilty under an adverse examination than they were under an offer of immunity upon turning state's evidence? Will the sanction of a constitution have any more awe than the sanction of a statute? In turning our constitution for the purpose into a criminal code, have we by the sacrifice of principle accomplished any immediate or practical result? It is much to be feared not.

We now come to the tricks by which legislation is procured. These and their new remedies I cannot consider as should be done, further than to say that in detail they are most of them good and apparently effective. They recognize evils which have existed, and try to meet them. But their effect, as a whole, which is of much more consequence than even the sum of their particulars, depends in the first place upon the question, whether they are mandatory or merely directory; whether, in other words, there is any sanction to compel obedience to them on the part of the legislature. To take, as an example,

the case of a statute asserted in a court of justice in Illinois, Pennsylvania, or New York to be unconstitutional because not read on three different days, would the court receive evidence that two readings took place on one day; would the court go behind the implicit assertion made by the legislature that it had acted regularly in passing a law published by it as a statute of the State? If not, of what efficacy is this constitutional provision? If yes, what, on the other hand, are the disadvantages, if any, likely to follow a rule under which regularly promulgated statutes may be impeached by matter outside of the record? These are two serious questions. To consider the latter alternative first, the doubt presents itself, whether the check, which holds the legislature to deliberation in law-making, will be productive of enough good to outweigh the dangers to which a law constitutional on its face, but liable to be overthrown by a revelation of facts which the citizen has no means of investigating, must put every one in the Commonwealth who is compelled to act under it. The further evil will here follow too, of throwing still additional responsibility upon the courts, already, under some of these new constitutions, as has been said, dangerously overweighted. If, on the other hand, the courts hold that such a result as this is the reduction to an absurdity, and that they are powerless to impeach the action of a co-ordinate branch of the government, except for matter appearing as of record, will the moral effect of a mere constitutional direction be sufficiently great in the way of controlling the legislature to compensate for the harm which must attend the insertion into a fundamental law of a *brutum fulmen?* This is not easy to answer; the probability is, that if such directions are not too numerous or minute, the legislature will, under most circumstances, respect them. That such shall be the case the legislature must show itself a much more honest body than the new constitutions of Illinois and Pennsylvania, for example, assume it to be. To an assembly radically corrupt the most stringent of these provisions will be withes of straw.* One enactment, which occurs only in the Pennsylva-

* On March 14, 1875, an all-night session of the Legislature of Pennsylvania was held at Harrisburg, at which the members became intoxicated, quarrelled, yelled so as to stop motions, gave each other the lie, and finally resorted to an

nia Constitution, is exceptionably indefensible, that, namely, which provides that no bill on its passage shall be amended so as to alter its original purpose. The wrong intended to be stopped by it is the old trick by which a given object is designed to be secretly accomplished though an amendment whose effect the Legislature fails to appreciate. The provision was well meant; but how a body of ordinarily intelligent men deliberately proposed such an article for the Constitution of their State is, to say the very least, inexplicable. If the courts decide it to be directory, the Legislature would not and should not obey it. If it is mandatory, how can a conscientious legislator offer any amendment or a citizen trust to any amended law? What was the original "purpose" of an

effective expedient for forestalling obnoxous legislation by breaking into the cellar and turning off the gas. The newspaper report winds up as follows: —

"The house then engaged in a second violent contention as to the priority of bills, and the scenes became once more utterly disgraceful. During the controversy the Speaker announced that some person in his hearing had called the chief clerk of the house a 'liar,' and in order to preserve the dignity of the body he asked that the person be ejected. This was done.

"Bills were then called up by the representative having the best lungs and being most lucky in attracting the attention of the Speaker, and the members apparently knew little and cared less about their contents. This continued till half past six o'clock, when Speaker Patterson, who was still on the floor, said that the members were leaving so rapidly that it would be advisable to adjourn.

"This was met with cries and yells of 'No!' and was lost, and then the scramble recommenced. It was discovered that the bill making appropriations to the Eastern Penitentiary had never passed beyond the first reading, and it was taken up on motion of Mr. Faunce, and passed through a second reading.

"The rapidity with which the bills were disposed of was so great that Mr. Reyburn at one time refused to vote for any more unless the titles were announced. Half of the members' seats were vacant, and the majority of those present crowded to the front of the Speaker's desk, and in their eagerness, in many cases, to attract the Speaker's attention, held up their hands and hats like bidders at an auction. The noise was distracting.

"One member moved to consider some bill by its number, and forthwith amendments were proposed, adding two or three other bills, and the whole batch would be hurriedly read and passed through a second reading.

"At one stage of the proceedings there were not over sixty members in the hall. The fact of there being no quorum became so palpable that the Speaker at last took cognizance of it, and a point of order was raised to that effect. The good-natured member who had raised it finally consented to withdraw it, to allow just one more bill to pass, and it did pass — being twenty sections long — in three minutes by the watch.

"At a quarter past seven o'clock the session of the house ended by a motion to adjourn."

act (the writer is not responsible for this English; "purport" was probably meant), how far is a given amendment in accord with it, are problems which, in the legislature, must be met upon every amendment offered. The same questions, with the further obligation of studying the journals of the legislature for the history of the statute, must be met by every private individual who proposes to act under it. That particular division of this class of provisions which enacts that bills must contain but one subject expressed in their titles; that no law shall be revived, repealed, etc., by mere reference, etc., etc., are not only good and easily enforceable by the courts, who can adjudicate the question by looking at the face of the act, but are also proper subjects of constitutional interposition. The provision in the constitutions of Pennsylvania, Michigan, and New York, requiring a majority in each house of the legislature to pass a bill, and prescribing the recording of the ayes and noes, ought to prevent the continuance of the wrong which has often heretofore been done by small bands of conspirators who would meet to push through legislation which with a full quorum must have been stopped at once. The recording of the ayes and noes would let a flood of light into the dark places of our capitols. But both these enactments, like those already spoken of, if mandatory, must cause a very considerable amount of danger and uncertainty to those who are affected by the statute law, that is, every one to a greater or less extent. If directory, how far will they be obeyed? The rest of this particular class may be dismissed with the general comment that they are good, though few have any pretensions to being radical.

The next subject for our consideration are the provisions as to taxation, which may be said to be wise and effective, and open to criticism only in two respects: first, as still further restricting the function of special legislation; and thus, secondly, adding to the duties of the court. The distrust too which is shown in limiting the power of the legislature to exempt from taxation seems groundless and may work hardship.

Extravagance on the part of State and municipal governments has, in all these new constitutions, been noticed.

In that of New York, to the extent of forbidding the State and its municipalities to assist private enterprises pecuniarily; and in the other constitutions by this together with further and more precise provisions, limiting to a given amount in gross or to a percentage of the value of the public property the power to contract debts. The advantages of these provisions are obvious, and, though philosophically they are not constitutional in character, the evils they are intended to remedy are so glaring and universal, and the legislature in this respect so utterly untrustworthy, that, if they are effective, they will be accorded the right of being. That they will be effective can hardly be doubted. The only question is, whether or not there are accompanying drawbacks. This species of law is not new at the West, and though beneficial has also shown itself troublesome. The difficulty has been when State or municipal bonds, issued in excess of the legal limit or without a previous popular vote regularly held, have found their way into the hands of *bona fide* holders about whose claims the courts think long before disallowing then. In any serious emergency this withdrawal of its natural powers from the legislature may be a source of danger, and even in ordinary times give rise to unexpected complications, especially in municipalities. By the Pennsylvania Constitution all the revenues beyond the ordinary and current expenses of government go into the sinking fund, which seems carrying the discipline of economy to the pitch of asceticism.

The spirit of these enactments, however harsh, may be justifiable in view of the recklessness and extravagance of the past; but let us understand that we are doing penance, and not pretend to say that such a course is a normal one for a healthy commonwealth.

The question of the fee system, by which certain public officers make large fortunes from a two or three years' tenure, has grown lately into great importance, for increase of appetite in the shape of shameless extortion has followed the increase of official pay. This the legislature, though much urged, has always failed to deal with; and popular impatience, fretting at the slowness of the natural way of remedying such an evil, turned with that readiness already spoken of to the constitutional convention for help, — a god which, not rating

its true dignity very high, was not unnaturally asked to unravel a knot which should have been thought unworthy of it. In Illinois and Pennsylvania, and in the proposed constitution of Ohio, it is provided that, as to a number of offices, salaries should take the place of remuneration from fees; the latter being ordered to be placed in the public treasury: a wholesome and valuable reform which should have been waited for, however, till extorted from the legislature.

Thus far we have had to do with enactments which, however legislative in their character, were at least upon subjects over which, in a general way, the domain of constitutional law extended. But we now come to an elaborate body of provisions which, neither in the principles which govern them, the results they propose to reach, nor the matters as to which they are enacted, are anything else than merely statutory; those provisions, namely, relating to corporations. In this connection the constitutions of Illinois, Pennsylvania, and the proposed constitution of Michigan are most conspicuous. In Ohio there is not a great deal on the point, though what there is is in the same spirit as the three other codes; and in the New York Constitution there is nothing further than the prohibition already described of special legislation granting corporate privileges. The corporation articles in the first three constitutions just referred to are directed in many cases against imaginary wrongs; such as that of extortion by transportation companies, who, having done more than any other agency to develop this country, are not, as a rule, earning six per cent on the capital invested in them. These articles are, we repeat, directed in many cases against imaginary wrongs, are voluminous, and are, as will be seen, futile. Nine tenths of each of them represents elementary law which the courts have always held themselves ready to enforce, and which, if ineffectual to prevent certain evils from flourishing in corporate bodies, was ineffectual through no defect in the law itself, but because the courts were practically helpless, having no right to interfere except in extreme cases and when the facts were clear. The courts can no more undertake to supervise the financial management of a railroad than they can stop stock-gambling; and how fulminating legal platitudes in a consti-

tution is to make any change one would wish to be shown. To give some examples of these latter, it is declared that railroad corporations are common carriers; that in the matter of freight and charges they shall exercise no unjust discrimination; that they shall undertake no enterprise not strictly warranted by their charter; that corporate officers shall not make private gain improperly from the corporation; that corporations shall not make fictitious issues of stocks or bonds, etc., etc. The rest of this subject can be considered briefly. The prohibition of the grant of irrevocable immunities is excellent, but not at all new. One of the first new features is that found in the Pennsylvania Constitution in the form of a provision as follows, which being the latest and fullest blossom of the Western spirit of Reform is given entire: —

"The General Assembly shall not remit the forfeiture of the charter of any corporation now existing, or alter or amend the same, or pass any other general or special law for the benefit of such corporation, except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of this Constitution."

Here, as once before, in examining this Constitution, the exaggeration of criticism is less emphatic than the statement of the proposition in its own naked absurdity. One of two parties to a contract addresses the other in this way: "I made a contract with you for which you gave me consideration. I see that I am bound; but unless you agree to release me, I shall not only make no contracts with you, nor do you any kindness, but I shall not even extend to you a single measure of justice which you may demand of me." What, too, is a law for the "benefit" of a corporation, or can there be such a law? Must not all laws be conclusively presumed to be enactments of justice, right, and expediency for the benefit of the State and of the State only? How far will the fact that a corporation must derive benefit from a law passed at no instigation of its own and avowedly for public ends bring it within this provision? If what would be laughable elsewhere were not of grievous moment when deliberately incorporated into the constitution of a great commonwealth, these suggestions thus cursorily given would not have been made. The next provision in order of importance and calling for special notice is perhaps that

which, in the Constitution of Pennsylvania and the proposed constitution of Michigan, declares it to be the right of every person to lay down a railroad between any two points and to connect with, intersect, etc., any other railroad. Here again, judicial interpretation must determine the extent of the proposed change. Does it mean that when a person comes to the legislature with the demand for a charter which shall allow him to build a railroad between two such points that the road must for its greater distance pass through the suburbs of a large city or through a public park, the charter cannot be denied? Or, on the other hand, if the legislature has any discretion, how much has it? That when this provision has passed the purgatorial fires of the courts it will come out anything else than the old law, it would be rash to assert. By the Constitution of Pennsylvania, and, strange to say, by the proposed one of Ohio, it is provided that no charge on a railroad between any two stations shall exceed the charge for a longer distance, etc. That unequal rates, low where there was a competing line and correspondingly high where there was none, were ever so much a cause of injustice as to justify the constitutional law-maker in descending to such pettiness, is not to be imagined. The clause even in its place as a statutory regulation could furthermore be easily evaded, and if stringent would often be unfair, as might be shown. The provision in the Constitution of Illinois and the proposed constitution of Ohio, to the effect that no corporate stock or indebtedness should be increased without a certain fixed notice to the stockholders, if a statute, would have no little good effect; the question as to how far the rights of *bona fide* bond-holders are to be affected by its violation would always, however, arise. In Illinois stock-dividends, without an exception, are forbidden. What is to be accomplished by this, in so far as it makes any change in the law which always regarded such transactions as illegal if fictitious, it is not easy to see.

Before coming to the "cumulative" vote provided for the case of elections of corporation directors, one new and at first sight very strange provision in the new constitutions of Illinois and Pennsylvania, and in the proposed constitutions of Ohio and Michigan, calls for notice. It is that which provides

that no railroad shall consolidate with, lease, control, or share the profits of any competing line. Herbert Spencer has laid it down, that where combination is possible, competition must cease. Have our constitutionalists, in the enactment just given, shown themselves able to cope with this law of trade? In the first place, can the law be evaded, for evasion is generally the outcome of a struggle between the law of a legislator and the laws which govern the natural movements of mankind? Will two railroads go on cutting each other's throats, because the constitution tells them to? If a real, however tacit union is what they tend towards merely by following an enlightened instinct of self-interest, will a constitutional veto have any more power over them than it would over the chemical combination of two molecules? In Michigan, railroads, if parallel, etc., cannot have so much as an "*understanding*" with each other. By what sanction this unique decree is to be enforced does not plainly appear. Was it in the accomplishment of such purposes as these that our jurists, derogating from their great functions, left the sphere of constitutional law to put in force a useless and vexatious code of ridiculous regulations? Was it for what men, ignorant enough to believe in such quackery, and presumptuous enough to build on the solid foundations of the old constitutions the flimsy fabric we have been viewing, — was it, let me repeat, for what such men could give that two Commonwealths like Illinois and Pennsylvania have exchanged the sanctity of their time-honored charters, casting these aside for codes which must be the sport of common litigation, and the ridicule of that corruption they are without the power to strike? Finally, in Illinois and Pennsylvania, and in the proposed constitution of Ohio, the rights of a minority of the stockholders of corporations are sought to be protected by providing that the directors of corporations should be elected by the "cumulative" vote; and this leads us naturally to the last and most interesting, probably, of the features of the late reform movement, and one which will be considered before passing to a discussion of the deficiencies, and in general the negative faults of the instruments before us; it is the introduction of proportional, or, as it is often called, "minority" representation into the new constitutions of Illinois and Penn-

sylvania, and the proposed constitution of Ohio. Now the various plans by which it has been designed to bring about proportional representation are so essentially different in both principle and method, that they have very little in common further than in the effect of limiting the absolute majority rule. Those ordinarily proposed are four: the "limited" or "restricted" vote; the "cumulative" or "free" vote; the "Gilpin" or "Geneva" plan; and the "Hare" plan.

The latter two, so far as theory goes, are indubitably just and certain; their practical aspect it is not proposed here to discuss. The "limited" or "restricted" vote gives, it may be enough here to say, a representation utterly out of proportion to the relative strength of the parties, and is moreover uncertain. The "cumulative" or "free" vote, on the other hand, while not as directly unjust in the same manner as the "limited" vote is, works more dangerously, through its uncertainty. As Mr. Stanwood in the number of this magazine for July, 1871, has said, it passes the cudgels from the majority to the minority. Mr. Horton, in the Penn Monthly for June, 1873, says: —

"The larger the district the more dangerous the peculiarities of this system. Were it tried on such a scale as that of congressional elections in Ohio, anything like fairness or proportionality would at first be impossible. Tending, as it plainly must, if unrestrained, to make representation fluctuating and disproportionate, it would eventually compel the tightening of the already oppressive bands of party discipline. In general the scale which, under the present district system, tends now to majority and now to minority, would be permanently weighed down in favor of the minority."

Such is the plan by which in Illinois and Ohio it was sought to open an epoch of reformed suffrage, and by which in these States, together with Pennsylvania, corporations were to be purified. To take the latter case first as of lesser importance, we will remember that in corporations the vote is by shares, and then consider what an absolute chaos a corporation election under this system must be; shares too which in the larger organizations are purchasable in the open market, and after being used for election purposes can be sold with little or no loss, perhaps indeed at a profit. It would be a demonstration

easy to make to show with how little money a Drew or a Gould could capture any railroad in the country; yet to this momentous danger the constitutionalists of three of our largest States seem to have been absolutely blind. In regard to the adoption of the cumulative vote introduced in the new Constitution of Illinois and the proposed constitution of Ohio, in elections for members of the State legislature, it may be said that as the district system does not appear to have been given up, and as therefore the number of places to be filled at any one time cannot exceed three or four, neither the good nor the bad effects will be very appreciable: the good, on the whole, probably prevailing. The reformer, in his anxiety to bring about proportional representation, might advocate a constitution which contained in such a shape this measure, looking upon it as a surrender of the unqualified majority principle and as a means of educating public opinion in order to lead to something better. Mill spoke and voted for the limited vote, and commended the cumulative vote as a *pis-aller*, being prepared to be ultimately satisfied with nothing short of the Hare plan. But with all deference to that great authority, it is urged that no good will come of paltering with one's sense of right in this matter. These proposed systems of voting are wrong and unjust, and are dangerous stepping-stones. The first result following their introduction into this country will be probably great indifference: the absolute unconcern with which the public in Pennsylvania regarded the late spectacle of two judges of the highest court of the Commonwealth being to all intents and purposes appointed to their places by irresponsible nominating conventions, was to a thoughtful mind nothing less than appalling. The next consequence will be that, the first time the wishes of a strong majority are thwarted in an exciting contest by some glaring injustice of this plan, the old rule will be violently brought back, and the day of the adoption of a genuine system of proportional representation be only further put off. Nothing is more easy than to experiment with a badly constructed machine, and then to condemn the invention.

Having in all the fulness essential to fairness considered the late reform measures, the subject of those evils which there

has been no attempt to meet, and of those which, calling for radical treatment or none, have been dealt with merely on the surface, comes properly before us. The story is too long to be told now, but in the form of bare suggestion, which is all that can be given to it, it carries, it is claimed, an emphasis which needs no help from rhetoric. The trouble which has made what we are accustomed to call our institutions a failure, for so deplorably many purposes, has been the gradual but consistent deterioration in the character of the managers of our government, accompanied at the same time by a tendency on the part of all original political power to lodge in the lower middle classes of the community, — creating an aristocracy from which refinement, cultivation, and the higher results of education are invariably excluded, rendering those who have these last qualifications little better than disfranchised, and thus bringing about a state of things in the representative bodies which there has been an attempt, as we have seen, to end by the express and particular constitutional prohibition of each pernicious consequence as it has shown itself. How fallacious and futile is this plan it has been the aim of the present article to show. Not to further suggest the true starting-place and the only direction to be taken which can lead to a permanent result for good, would be to leave the subject at an unsatisfactory stage. The station, let it be therefore said, from which we should begin is the recognition of the fact that our people, while enjoying the inestimable advantage of a fresh start in a land of high natural resources, and with a capacity for freedom and self-government, the exclusive property, many think, of our race, has in cutting itself off from the Old World lost much that would help our present exigency. We have no class possessing leisure, for whom money can have no temptations and whose ambitions are almost necessarily honorable. We are, or we think that we are, not able to pay for anything other than a cheap government; and we will not say to the possible aspirant for political greatness, "You need have no fear as to those hostages to fortune, your wife and children; if you are worthy, your future is assured." We rather say, "Give up your profession, your business, and we will give you a short term of office with a beggarly compensation; and as to

your future afterwards, that shall be as it may." Ought the consequence, that all our best, and nearly all our ordinary, administrative ability is to be found in business-houses, the corporations, or in absorbing professional pursuits, to astonish any one? We have staked our fate, too, upon universal suffrage and all its results, and must take as a factor in our calculation the difficulties of a system where the vote of the least worthy counts for as much as that of the most worthy; and we must not forget the fact that at the same time we forbid representation to any order, class, or congery of men, however pure may be their aims, or valuable their judgment, unless they persuade to their views the majority of what for the purpose in question may have to be regarded as an ignorant and insensible vulgar. We have also in full operation a superficial public education, which brings men to the point of desiring political success, without raising them to the degree of moral and mental cultivation which, and which only, would fit them for a statesman's career; an education which, yearly, too, turns out by the score conceited sciolists to whom maturity brings no sense of reverence or self-distrust, and who soon attain to be the manufacturers of that shallow journalism which, in this country, is such a powerful agency in determining the public tone. We need further, and this grievously, more intellectual centralization: the few great cities do not pretend to exercise that influence which is their prerogative and their responsibility. Bœotia with us comes to the very gates of Athens. And while our economy, so assuredly settled on true and lasting foundations, makes the American Republic, in its simple grandeur, with the glory of its past history and its certain possession of present freedom to be the rational boast of us all, the truth is, that, so far as concerns immediate hope of political progress, the real question of the day, our future could scarcely be less bright. Starting, then, from assumptions such as these, what direction shall we take? Do, it is urged, just the opposite of that which was done by the late reform movement, — trust our servants, not insult them, and let us show our trust by assuring them their places for a long enough time to make it worth a capable man's while to enter the service, and give such hire as the

only laborers worthy of the State consider themselves entitled to ask. And let the absurdity be abandoned that in bidding for employees, the State, with its cheap offers, can ever get anything, excluding stray chances, but the refuse which the activities of private life have thrown aside. The deeper defects which come from the power of ignorant voters, to say one word upon this point, can be reached only by an intelligent system of proportional representation, by which combinations to reach given ends can be framed and made effective, and by which the contest between a majority and a powerful minority will take the form of the worthiness of the candidates for whom support is asked. What was done by the conventions we have seen; and in bringing this paper to an end, it will probably be well to look at the movement as a whole, now that we take our leave of it. As has been said, its birthplace was the same as that of the "Granger" laws, and its promoters were men who had an inordinate belief, common among the half-educated, in the potency of legislation, and an ignorance, singular in its way, of the simple causes of the evils which they found to prevail in their communities.

The Illinois Constitution of 1870 is of the same category as the "Potter" Law, and the influence which it had over the Constitutional Convention of Pennsylvania is only accountable on the admission of a want of political culture in the older States which it is difficult to pardon. The new Constitution of Pennsylvania began where that of Illinois ended, is no more effective, much more pretentious, and to the same, if not to a greater degree perversive of the purposes of a constitution. And this consideration on sober reflection would, it is believed, have ordained a different fate for it; but at six weeks' notice it was voted upon by the people, who through various means had been excited to a pitch of enthusiasm clearly unreasoning. The Democratic party voted solidly for it, because it abolished a law by which, in Philadelphia, a registration of votes was required, and under which the Republican "Ring" manipulated all the elections. A considerable and highly respectable body of Municipal Reformers in Philadelphia worked hard for it, because it abolished the fee system; both these parties thus using a Constitution as the means of getting legislation

denied them by the proper Legislature. And finally the Republicans voted for it, by way of disavowing the "Philadelphia" Ring, and, like the Tories who applauded at the first representation of *Cato*, were determined not to be behind their adversaries in virtuous demonstration. The chief reason, however, of the large vote which was given for this instrument was that the Convention believed in its own work, and, as the men who composed it were generally influential, they found it easy to persuade the public to do so too. The governor of Pennsylvania, under an act of assembly, appointed a commission to revise the work before the whole of it had gone into operation, and the result of their labors has been to correct a number of minor mistakes, defects, and inconsistencies. The commission unfortunately did not feel at liberty to do more. They suggested the abolition of the "cumulative" vote in the election of the directors of corporations, and pointed out the evil which must arise through the passage of general laws designed to meet special cases. The new Constitution of New York is a sensible, practical reform, keeping for most part within constitutional bounds, general in its character, and, above all, making no pretences to being a political panacea. It is such an instrument as a number of intelligent men, having known the workings of a State administration, might suggest from their own experience. Without professing to be radical, and going in most cases as far as would be wise in the present state of public sentiment, the student of government can accept it as safe and beneficial, if not progressive.

We are not, it must be remembered, without an accession of valuable knowledge from this movement of reform. We know in detail all the ultimate evil results of our system; we know that practical men on our present political basis with their best suggestions cannot put an end to them; and we know, what is best of all to know, that our people are in the main honest and anxious to have a good government. With that knowledge and learning from our recent mistakes, it is not Quixotic to look forward to a new attempt at purification which shall reach its ends.

HENRY REED.